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February 9, 2009

VIA ELECTRONIC FILING

Hon. Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Dear Secretary Quinlan:

Attached for filing in STB Finance Docket No. 35164 BNSF Railway Company--
Petition for Declaratory Order is the Reply of Bio-Energy Wellness Center and North
American Transportation Institute.

If you have any question concerning the filing or I otherwise can be of assistance,
please get back to me.

Sincerely yours


Fritz R. Kahn

cc Eric M. Hocky, Esq.
Kristy D. Clark, Esq.
Mr. Edwin Kessler

**SURFACE TRANSPORTATION BOARD
WASHINGTON DC**

STB Finance Docket No. 35164

BNSF RAILWAY COMPANY--PETITION FOR DECLARATORY ORDER

**REPLY
OF
BIO-ENERGY WELLNESS CENTER and
NORTH AMERICAN TRANSPORTATION INSTITUTE**

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Attorney for

**BIO-ENERGY WELLNESS CENTER and
NORTH AMERICAN TRANSPORTATION INSTITUTE**

Dated February 9, 2009

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC

SIB Finance Docket No. 35164

BNSF RAILWAY COMPANY--PETITION FOR DECLARATORY ORDER

REPLY
OF
BIO-ENERGY WELLNESS CENTER and
NORTH AMERICAN TRANSPORTATION INSTITUTE

Bio-Energy Wellness Center and North American Transportation Institute deem the letter filed January 30, 2009 on behalf of the Oklahoma Department of Transportation ("ODOT") to be disingenuous. Though couched in terms of seeking an early determination of the issues in this proceeding, the letter is an ill disguised endorsement of BNSF Railway Company's unauthorized abandonment of a segment of its Chickasha Subdivision, between Milepost 540.15 and Milepost 541.69.

ODOT knows full well that BNSF in fact has abandoned the 1.54-mile of railroad line notwithstanding that the Board has not authorized its abandonment. No trains have been operated over the line in several weeks' time and BNSF has no intention of ever again operating trains over the line. Indeed, track has been removed and the line otherwise rendered incapable of handling traffic. BNSF insists that that no shippers on the 1.54-mile line have lost service as a result of its *de facto* abandonment, but that is altogether irrelevant. The abandoned line is a critical segment of BNSF's line of railroad extending between Quanah, Texas, and Springfield, Missouri, and neither ODOT nor BNSF has made any effort to address what the effect of the abandonment of the 1.54-

mile segment has been on the shippers or consignees situated on and making use of the railroad line between Quanah and Springfield. If nothing else, their traffic has been delayed because of the change in the movement of trains through Oklahoma City.

ODOI mimics BNSF's claim that the abandonment it has effected is nothing more than a line relocation. Our Comments, filed November 3, 2008, cites no fewer than seven Board and ICC decisions supporting our contention that what BNSF has done is not a line relocation at all but a mere diversion of traffic from the Chickasha Subdivision to its Packingtown Lead. We'll not clutter the record further by repeating our discussion in that pleading but incorporate it by reference.


ODOI claims that it needs the 1.54-mile line so that can continue with its reconstruction of I-40 through Oklahoma City at a cost of approximately \$70 million. That a railroad right-of-way is desired for the reconstruction of a highway and to achieve savings in doing so heretofore have been held by the STB and ICC to be insufficient reasons for authorizing the abandonment of a railroad line. See, STB Docket No. AB-400 (Sub-No. 4), Seminole-Gulf Railway, L. P. --Adverse Abandonment--in Lee County, FL, served November 18, 2004, Southern Pac. Co. Abandonment, 317 I.C.C. 645, 651, 656 (1963).

Finally, ODOI interjects that the reconstruction of I-40 needs to go forward because of the hazards posed by the deterioration of its bridges and members. It, however, fails to mention that the Packingtown Lead has an appreciable greater number of at-grade highway crossings than the Chickasha Subdivision, and, hence, BNSF's diversion of traffic from the Chickasha Subdivision to the Packingtown Lead poses greater risks to the safety of the residents of Oklahoma City.

Respectfully submitted,

BIO ENERGY WELLNESS CENTER and
NORTH AMERICAN TRANSPORTATION INSTITUTE

By their attorney

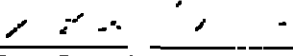

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Dated February 9, 2009

CERTIFICATE OF SERVICE

I certify I this day have served copies of the foregoing Reply upon the Oklahoma Department of Transportation BNSF Railway Company and Mr Edwin Kessler by e-mailing copies to ODOT counsel Eric M Hocky Esq., BNSF counsel Kristy D Clark Esq. and to Mr Edwin Kessler

Dated at Washington DC, this 9th day of February 2009


Fritz R. Kahn